

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 07038, February 23, 2015 ]**

**JOHE DEVELOPMENT CORPORATION, PETITIONER, VS. SPS.  
MAXIMO AND JOCELYN OLIAR, RESPONDENTS.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

This is a Petition for Review under Rule 42 of the Rules of Court, assailing the Decision<sup>[1]</sup> dated March 19, 2012 rendered by the Regional Trial Court of Cebu City, Branch 10 in the exercise of its appellate jurisdiction in Civil Case No. CEB-38221.

#### **Factual and Procedural Antecedents**

On August 26, 2010, the petitioner, Johe Development Corporation (hereafter referred to as JDC for brevity), filed a Complaint<sup>[2]</sup> for unlawful detainer against the respondents Spouses Maximo and Jocelyn Oliar (hereafter referred to as Spouses Oliar for brevity). In their complaint, the petitioner alleged the following:

"2.4 (sic) Plaintiff is the owner of a parcel of land situated at Sitio Lahing-Lahing, Barangay Mabolo, Cebu City known as Lot No. 616 and covered by Transfer Certificate of Title No. 84774, a copy of which is hereto attached as Annex "B"<sup>[3]</sup> hereof;

2.2 Plaintiff declared the same for taxation purposes and had been religiously paying the realty taxes due thereon, a copy of the latest tax declaration is hereto attached as Annex "C"<sup>[4]</sup>;

2.3 Sometime in 1990's, plaintiff out of tolerance allowed the defendant to construct a residential building on Lot No. 616 on the condition that he will voluntarily vacate the premises in the event plaintiff will already use said lot;

2.4. That on February 03, 2010, plaintiff sent to herein defendants a demand letter to vacate said premises within ten (10) days from receipt hereof; (See Annex "D"), photocopy of demand letter<sup>[5]</sup>;

2.5 That instead of vacating the lot, without valid reasons, defendants insisted to occupy the same and withhold its possession from plaintiff, defendants remains (sic) adamant up to the present;

2.6 That several dialogues and meetings were held with defendants but to no avail; worse, defendants insists (sic) to be paid first as condition for them to vacate the said portion they had been occupying for free for a

long period of time, thus, clearly abusing the privilege granted upon them by plaintiff;"

The petitioner prayed that the respondents-spouses, their agents, heirs, successors-in-interest and assigns be ordered to vacate the subject property , remove or destroy the structures constructed by the respondents on the subject lot and that the respondents be directed to pay rentals computed from the time of receipt of the demand letter at the rate of P1,000.00 per month from the date of demand until the property is vacated.

In their Answer<sup>[6]</sup>, the respondents spouses averred, to wit:

"5. Defendant had peacefully continuously occupying (sic) the lot since year 1910 (time immemorial). The premises occupied by the herein defendant is a foreshore property and in fact the Barangay was the one developed (sic) said property whereby the Cebu City Government lend (sic) its equipment thereto;

6. They were just surprised when complainant suddenly appeared and claimed that the subject lot is owned by the complainant;

7. This set-up went on for several years until plaintiff recently filed a complaint against the herein defendant to vacate the premises, alleging that plaintiff owned the subject lot;

8. Defendant is a member of Kalambo, Mabolo Organization, Inc., who is considered as UNDERPRIVILEGED AND HOMELESS CITIZENS whose income or combined household income falls within the poverty threshold as defined by National Economic and Development Authority."

The respondents spouses, in their Affirmative Defenses<sup>[7]</sup>, argued that the petitioner's complaint for unlawful detainer is defective as it failed to allege jurisdictional facts such as when and how defendant came to possess the disputed property. Respondents spouses argue that, if indeed the petitioner has the right over the property subject of litigation, the proper remedy should have been an action for recovery of property and not under a summary proceeding for unlawful detainer. Nevertheless, the respondents-spouses argue that the petitioner's claim over the property is already barred by laches after an unreasonable delay in the filing of their complaint.

However, on July 11, 2011, the lower court issued an order declaring defendant's Answer to have been filed out of time.<sup>[8]</sup>

### ***Ruling of the Municipal Trial Court in Cities***

On September 19, 2011, the Municipal Trial Court in Cities of Cebu City, Branch 7 decided in favor of petitioner and ruled, to wit:

"Record shows that defendants were duly served with summons on May 31, 2011 as per this Court's Process Server's return dated June 6, 2011. Said defendants failed to file their Answer pursuant to Section 5 of the Rule of Summary Procedure, hence, the instant case was deemed

submitted for judgment pursuant to Section 6 of the Rule in Summary Procedure.

*In fine, the principal issue posited in the instant case is whether or not the plaintiff has a legal right to eject the defendants from the premises in question.*

Evidence shows that the plaintiff is the registered owner of the property in question covered by TCT No. 84774 and is conclusive evidence not only of the ownership of the land referred to but also its location and that plaintiff has the right to file an action to recover possession thereof.

On the other hand, defendants have failed to adduce any legal ground (i.e., deed of sale or even a contract of lease) for their continued stay on the property belonging to the plaintiff and this was definitely the situation that obtained in and gave rise to the ejectment case.

The plaintiffs can now claim that defendants' possession of the controverted portion was a mere tolerance. Consequently, there is an implied contract between the plaintiff and the defendants as would qualify it as an unlawful detainer case, and therefore, the owners can validly exercise the right of possession and the use of the land that they deem proper and advantageous.

One whose stay, like that of the defendants is merely tolerated, and becomes a deforciant illegally occupying the land the moment he is required to leave (Odsique vs. CA, 233 SCRA 627).

A person who occupies the land of another at the latter's tolerance or permission, without any contract between them is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment is the proper remedy (Calubayan vs. Pascual, 21 SCRA, 146, 148).

WHEREFORE, from the facts borne out by the evidence, law and jurisprudence on actions for ejectment, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering defendants to vacate the premises-in-litis and deliver possession thereof to the plaintiff.

SO ORDERED."

### ***Ruling of the Regional Trial Court***

Aggrieved by the MTCC's decision, the respondents spouses filed an appeal before the Regional Trial Court of Cebu City Branch 10, which, in turn, reversed the ruling of the MTCC in its Decision<sup>9</sup> dated March 19, 2012, to wit:

"In the instant case, it is beyond dispute that the plaintiff's Complaint is COMPLETELY BEREFT OF ANY ALLEGATION as to the mode or manner by which the defendants gained entry into the subject lot, or as to HOW ENTRY WAS EFFECTED. The plaintiff likewise failed to state, even in passing, how the defendants dispossessed it of the lot and when or on

what date such dispossession took place. The complaint is COMPLETELY SILENT as to the existence of a contract, whether express or implied, between the plaintiff and defendants, and/or whether defendant's possession of the lot was by mere tolerance or permission of the plaintiff, which permission or tolerance was given at the beginning of defendant's possession of the lot was legal or illegal at its inception. Under these circumstances, therefore, the plaintiff's act of unduly captioning their Complaint as one for UNLAWFUL DETAINER becomes an exercise in futility, as nowhere in the allegations of the Complaint did the plaintiff even come close to meeting the jurisdictional requisites mandated for unlawful retained.

In fact the complaint showed that defendants-appellants allegedly constructed their house on the said property sometime in the 1990's, which was tolerated by plaintiff-appellee, subject to the condition that defendants will vacate the property upon demand. On 2010, plaintiff demanded from defendants-appellants to vacate the property, but they refused. Based on the guidelines provided for by the Supreme Court, in actions for unlawful detainer, it is the considered opinion of this Court that the allegations stated in the complaint fall short of the requirements provided for by the Supreme Court especially if the issue raised by the plaintiff was the fact that consent was given to the defendants by mere tolerance.

Thus, to properly qualify the actions for unlawful detainer, the allegations in the complaint should properly allege how entry was made or how and when dispossession started. Plaintiff's allegations that defendants-appellants constructed the house on Lot No. 616, which was tolerated by plaintiff corporation, cannot be given sufficient basis considering that such allegations are too general to be considered as the date of reckoning when defendant started to occupy the said land.

Furthermore, defendants in their answer, maintained that they have been occupying the land for more than a period of thirty (30) years, which started in 1910 up to the present, without any knowledge that plaintiff is the owner of the said lot.

While it is true that the filing of the case for unlawful detainer was made within the period of one (1) year from the date of demand to vacate the property, still it does not vest title to what appears this Court to be an insufficient allegation casting doubt as to when and how the act of entry and dispossession actually started.

Xx x

WHEREFORE, PREMISES CONSIDERED, this Court hereby RESOLVES:

1. To GRANT the appeal of defendant-appellant; and 2. To REVERSE the decision of the Municipal Trial Court in Cities, Branch 6 in Civil Case No. R-5632, dated September 19, 2011, and to dismiss the complaint of plaintiff-appellee for lack of jurisdiction of the MTCC to hear the case.